

Chapter 2

Background and commentary on the Bill

Council of Australian Government health and hospital reform

2.1 On 20 April 2010 the Council of Australian Governments (COAG), with the exception of Western Australia, endorsed the National Health and Hospitals Network Agreement (NHHN Agreement). Under the Agreement, the Commonwealth Government committed to increase its health and hospital funding to provide:

- (a) 60 per cent of the national efficient price of every public hospital service provided to public patients;
- (b) 60 per cent of recurrent expenditure on research and training functions funded by States undertaken in public hospitals;
- (c) 60 per cent of block funding paid against a COAG-agreed funding model, including for agreed functions and services and community service obligations required to support small regional and rural public hospitals;
- (d) 60 per cent of capital expenditure, on a 'user cost of capital' basis where possible; and
- (e) over time, up to 100 per cent of the national efficient price of 'primary health care equivalent' outpatient services provided to public patients.¹

2.2 Under the NHHN Agreement, the Commonwealth will also take full funding and policy responsibility for general practice, primary health care and for the delivery of aged care services (except home and community care services in Victoria).

2.3 The Commonwealth will finance the health and hospital reforms through:

- (a) retention and dedication of an agreed amount of Goods and Services Tax (GST) revenue to health and hospital services;
- (b) funding as currently provided by the National Healthcare Specific Purpose Payment; and
- (c) provision of additional top-up payments from 2014-15.²

2.4 The NHHN agreement provided for the establishment of several bodies to perform oversight and governance functions relating to the NHHN. These are:

1 Council of Australian Governments, *National Health and Hospitals Network Agreement*, pp. 4-5.

2 *Explanatory Memorandum*, p. 4

- the Independent Hospital Pricing Authority, which will calculate and determine the national efficient price for public hospital services, as well as calculating the Commonwealth's block funding payments under the NHHN;
- a National Performance Authority to monitor the performance of Local Hospital Networks under the NHHN; and
- the establishment of the Australian Commission on Safety and Quality in Health Care as a permanent independent body to develop new national clinical and safety standards.

Provisions of the Bill

2.5 The Bill amends the *Federal Financial Relations Act 2009* in order to:

- vary the way the Commonwealth makes GST payments to states participating in the National Health and Hospitals Network Agreement by providing for a new category of Dedicated GST payments;
- replace the current National Healthcare Specific Purpose Payment with a Special payment for states participating in the NHHN agreement;
- provide for additional top-up payments from the 2014-15 financial year to be paid to states participating in the NHHN agreement from 2014-15;
- create an NHHN Fund to facilitate the payment of dedicated GST revenue, Special payments and Top-up payments under the Act; and
- specify conditions for making payments through the NHHN fund and place conditions on the Minister when making determinations relating to the NHHN agreement.

Dedicated GST payments (from 1 July 2011)

2.6 The Commonwealth currently makes GST revenue assistance payments to the states and territories. These payments are untied – i.e. they may be used for any purpose determined by a state or territory.

2.7 The Bill establishes two categories of GST payments for those states and territories participating in the NHHN Agreement:

- (a) dedicated GST revenue payments for health and hospital services; and
- (b) untied GST revenue payments to be used for any purpose.

2.8 The proportion of dedicated GST for each financial year will be determined by the Minister on a State by State basis, depending upon each State's share of the total GST pool and health care costs. In aggregate, however, it will be around one third of the total GST pool.³

3 Australian Government, *Budget Paper No. 3, 2010-11*, pp 112-113.

2.9 The amount of dedicated GST from 2011-12 to 2013-14 is described in 2010-11 Budget Paper No. 3 as:

... the amount required in addition to the funding sourced from the existing National Healthcare SPP in each State to fund 60 per cent of the efficient price of public hospitals, take full funding responsibility for GP and primary health care services undertaken by States, and the net additional cost to the Commonwealth from changes in roles and responsibilities for the Home and Community Care program and related programs.⁴

2.10 From 2014-15 the amount of dedicated GST will be fixed, based on the 2013-14 costs, and indexed at the rate of overall GST growth.⁵ During the transition to the new arrangements, the NHHN Agreement provides for a periodic three-year review and adjustment on the level of dedicated GST. The agreement also provides for a review of the level of GST to be dedicated once the system has transitioned.

Special and Specific Purpose Payments (from 1 July 2011)

2.11 The Commonwealth currently provides an ongoing financial contribution to the states and territories for the delivery of health services – referred to as the National Healthcare Specific Purpose Payment (National Healthcare SPP).

2.12 For those states and territories participating in the NHHN Agreement, the Bill establishes a new Special payment to replace the National Healthcare SPP. The new Special payment will be equivalent to the financial assistance provided under the current National Healthcare SPP. The Special Payment will be indexed from 2012-13 according to an indexation rate determined by the Minister.

2.13 The amount paid to each state, however, may be adjusted to account for changed funding responsibilities under the NHHN agreement. Under proposed subsection 15G of the Bill, the Minister is given the power to make determinations detailing that an amount is the positive or negative State adjustment amount for a state in a financial year. These provisions are included 'in order to achieve a budget neutral transfer of funding for HACC [Home and Community Care] and related programs from the Commonwealth'.⁶

2.14 This means that the transfer of funding responsibility for HACC and related programs to the Commonwealth, agreed to under the NHHN Agreement, will be funded by a commensurate reduction in the Special Payment amounts paid to states, via the negative State adjustment amount mechanism provided for in the legislation. In response to a question taken on notice at the public hearing, Treasury provided their estimate of the total reduction of the states' total Special Payment amount over the forward estimates:

4 Australian Government, *Budget Paper No. 3 2010-11*, p. 112.

5 Council of Australian Governments, *National Health and Hospitals Network Agreement*, p. 28.

6 *Explanatory Memorandum*, p. 13.

Table 1: Estimated total reduction in Special Payment to 2013-14 ⁷

| Year | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|---------------|---------|----------|----------|----------|
| Expense (\$m) | \$0m | -\$38.1m | -\$61.7m | -\$77.0m |

2.15 The bill provides for any states not participating in the NHHN Agreement to continue to receive the National Healthcare SPP under the current arrangements.

Additional top-up funding (from 1 July 2014)

2.16 The Bill provides for the Commonwealth to make additional 'top-up payments' to those states and territories participating in the NHHN Agreement from 1 July 2014, with the specific amount to be determined by the Minister. The payments will reflect the additional expenditure required over and above the funding sourced from the new Healthcare Special Payment and the dedicated GST to fund the Commonwealth's health commitment to fund 60 per cent of hospital funding and 100 per cent of General Practice and primary care services. The need for this additional expenditure is largely due to the fact that hospital costs are expected to grow at approximately 8 per cent per annum over the medium term, while over the same period GST revenue is expected to grow at only 6 per cent per annum.⁸

2.17 Between 2014-15 and 2019-20, the Commonwealth has guaranteed that the top-up payment will be no less than \$15.6 billion over and above the funding sourced from the National Healthcare SPP and the dedicated share of GST.⁹ The Bill does not indicate how this funding will be distributed between participating NHHN states.

2.18 In the event that the amount required to fund the Commonwealth's health and hospital commitments is less than \$15.6 billion, the residual funds will be provided to participating states and territories to fund any health services that will assist in ameliorating the growth in demand for hospital services.

Existing Commonwealth funding streams

2.19 During the inquiry Treasury noted that in addition to the three streams of Commonwealth funding outlined in the NHHN Agreement, the Commonwealth will continue to provide \$2.6 billion in further funding for health and hospitals between 2011-12 and 2013-14 through the Improving Public Hospital Services National

7 Department of the Treasury, answer to question on notice (Question No 5), 15 December 2010 (received 13 January 2011).

8 *Explanatory Memorandum*, p. 16.

9 This commitment is based on all states and territories endorsing the NHHN Agreement. In the event that not all states and territories endorse the NHHN Agreement over this period, the total funding may be reduced.

Partnership (IPHS NP), as well as providing Commonwealth Own Source Payments to the states and territories for items such as hospital care for veterans.¹⁰

NHHN Fund

2.20 The Bill establishes a National Health and Hospitals Network Fund (NHHN Fund) to facilitate the payment of Commonwealth funding for the NHHN Agreement. To oversee the NHHN Fund and the distribution of funding, the NHHN Agreement provided for the establishment of an independent National Funding Authority.¹¹ Subsequent to the NHHN Agreement, however, the Commonwealth and states and territories agreed that a National Funding Authority would not be required.¹² Under new arrangements, payments from the NHHN Fund will now be paid directly to participating states and territories and/or to joint intergovernmental funding authorities.

2.21 The Federal Minister for Health and Ageing, the Hon Nicola Roxon MP, described the change as an improvement:

We believe that we can get the transparency that is needed, that we can actually track the way the money will be spent and passed onto local hospital networks without establishing a separate authority ...¹³

2.22 The NHHN Fund is established under proposed subsection 15A of the Bill as a Special Account for the purposes of the *Financial Management and Accountability Act 1997*. This means that amounts determined by the Minister are quarantined from the Consolidated Revenue Fund into the NHHN Fund, and can only be paid from the NHHN Fund for the purposes specified in the Bill.¹⁴

2.23 The Bill contains provisions which allow for grants paid from the NHHN Fund to the joint intergovernmental funding authorities to be forwarded to Local Hospital Networks (LHNs) established under the NHHN, provided that the money is spent on NHHN matters.

10 Department of the Treasury, Answer to Question on Notice (Question No. 7), 15 December 2010 (received 13 January 2011).

11 Council of Australian Governments, *National Health and Hospitals Network Agreement*, p. 29.

12 Department of the Prime Minister and Cabinet, answer to question on notice from the Senate Finance and Public Administration References Committee public hearing, 7 June 2010 (received 16 June 2010).

13 The Hon Nicola Roxon MP, Minister for Health and Ageing, Transcript of Press Conference, Canberra, 17 June 2010, <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/tr-yr10-nr-nrsp170610.htm?OpenDocument&yr=2010&mth=6> (accessed 9 July 2010).

14 *Explanatory memorandum*, p. 23.

Legislative Instruments

2.24 The Bill provides for the Minister to determine for each financial year: the dedicated GST revenue for a state; the specified amount of Special Payments (and State adjusted amounts which may arise from changes in funding responsibilities); and the specified amount of top up payments.

2.25 Although these determinations will be legislative instruments, they will not be disallowable by the Federal Parliament because 'the determination facilitates the operation of an intergovernmental body or scheme involving the Commonwealth and a State'¹⁵, in accordance with subsection 44(1)(a) of the *Legislative Instruments Act 2003*. In making these determinations however, the Minister must take into consideration the NHHN Agreement, the Intergovernmental Agreement and, where appropriate, recommendations from the Commonwealth Grants Commission.

2.26 To provide certainty to the states and territories, the Bill establishes a three part process to be followed in the event that a determination is inconsistent with the NHHN Agreement and would result in substantial financial detriment to one or more states/territories. In these circumstances a determination cannot be made unless:

- (a) COAG has agreed to the determination;
- (b) a copy of the proposed determination is provided to the Premiers of all participating states and territories at least three months prior to COAG (unless COAG otherwise agreed to waive this requirement); and
- (c) each House of the Federal Parliament has agreed to the determination.¹⁶

Scrutiny of Bills Digest

2.27 The Senate Standing Committee on the Scrutiny of Bills considered the Bill in its Alerts Digest No. 9 of 2010, and noted several issues with the Bill in its current form.

2.28 The committee criticised the Bill's current Explanatory Memorandum for not including a sufficient index and recommended that a new Explanatory Memorandum for the Bill be issued by the Treasurer.¹⁷ When asked at the public hearing on 15 December 2010 whether any advice from the Treasurer would be forthcoming, a Treasury official stated 'We are expecting that it is imminent'.¹⁸

15 *Explanatory memorandum*, p. 16.

16 *Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010*, proposed Subsection 21B.

17 Senate Standing Committee on the Scrutiny of Bills, *Alert Digest No. 9 of 2010*, p. 5.

18 Ms Vroombout, *Proof Committee Hansard*, 15 December 2010, p. 18.

2.29 Secondly, the committee noted that several legislative instruments established by the Bill are not disallowable by the Parliament, and that the removal of such parliamentary oversight is a serious matter. It concluded, however, that the provisions were consistent with subparagraph 44(1)(a) of the Legislative Instruments Act, which states that a legislative instrument is not subject to disallowance if it facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States.

2.30 The committee's final note concerned the proposed creation of the NHHN Fund as a Special Account for the purposes of the FMA Act. This section would give the Minister sole discretion to appropriate payment amounts from the Consolidated Revenue Fund to the NHHN fund, thus establishing a standing appropriation of funds. Noting that the appropriation of money from Commonwealth revenue is a legislative function, the committee stated that these provisions in their current form may be inappropriately delegating legislative powers.¹⁹

2.31 The committee sought the Minister's advice to see whether the Commonwealth's funding of the NHHN agreement could be subject to approval through the standard annual appropriations process, thus ensuring continuing Parliamentary oversight. The Minister has not yet responded to the concerns of the committee.

Views of Submitters

2.32 The inquiry received relatively little interest. Two submissions were received by the committee before the closing date of 30 November 2010.

2.33 Dr Kathryn Antioch, a Health Economics expert and the former Health Economics member of the Principal Committees of the National Health and Medical Research Council, responds in her submission to suggestions from Shadow Treasurer the Hon. Joe Hockey MP that the governance arrangements created under the NHHN agreement are unclear and may not reduce administrative duplication within the Healthcare system. Offering evidence from Victoria, she argues that local hospital network governance and Activity Based Funding, as proposed under the NHHN agreement, is effective:

The governance network structure in Victoria has enabled greater control at the local level, strengthened governance across two major hospital networks...the result was improvements in quality and efficiency... The government's broad reform agenda draws, in general, on the Victorian State system of corporate governance via hospital networks in the context of Activity Based Funding. In my view the government's reforms will facilitate greater quality and efficiency by assisting Local Hospital Networks and other organisations to achieve even greater outcomes than

19 Senate Standing Committee on the Scrutiny of Bills, *Alert Digest No. 9 of 2010*, p. 7.

that achieved in the Victorian experience to date... In my view the reforms represent excellent Evidence Based Policy.²⁰

2.34 Catholic Health Australia, the peak body for the 21 public hospitals, 54 private hospitals and 550 aged care facilities operated by the Catholic Church in Australia, are supportive of the Bill and the NHHN reforms more broadly. In their submission they urge that proposed section 15D(5) of the Bill, which allows the Minister to impose conditions on the payments of dedicated GST revenue payments to States, be used by the Commonwealth to:

- ensure that State/Territory Health Departments and proposed Local Hospital Networks are transparent in reporting funding and expenditure in accordance with the NHHN agreement, particularly with regard to non-government owned and operated healthcare providers;
- ensure that the States/Territories abide by the sentiment expressed at paragraph A17 of the NHHN Agreement in supporting the "vital role played by non-government providers in providing health and public hospital services, including Catholic hospitals, and [working] together, including with relevant stakeholders, to ensure this important contribution continues under the new arrangements"; and
- ensure that Catholic hospitals are treated equitably under the NHHN and are able to retain autonomy in relation to the services they provide.²¹

2.35 The submission notes that Catholic hospitals have historically been subject to different funding arrangements than government owned and operated hospitals, and have generally been less favourably treated; Catholic Health Australia seeks to ensure that funding arrangements under the NHHN are equitable.²²

20 Dr Kathryn Antioch, *Submission 1*, pp 4, 6.

21 Catholic Health Australia, *Submission 2*, pp 3-4.

22 Catholic Health Australia, *Submission 2*, p. 4.